

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	98 CR 54 - 2	DATE	12/22/2004
CASE TITLE	USA vs. Darwin Montana		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Motion under 18 U.S.C. 3582

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Order. Certainly no holding of such retroactivity is implied either by Blakely itself or by Booker or Fanfan. That being so, this Court views itself as being without jurisdiction to grant the relief sought by Montana, and his motion is denied summarily.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials	2004 DEC 22 PM 4:45 Date/time received in central Clerk's Office	number of notices	Document Number 92
			DEC 23 2004 date docketed	
			<i>[Signature]</i> docketing deputy initials	
			12/22/2004 date mailed notice	
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

United States of America)

Plaintiff,)

v.)

Darwin Montana)

Defendant.)

No. 98 CR 54-2

DOCKETED

DEC 23 2004

MEMORANDUM ORDER

Darwin Montana ("Montana") has just submitted a self-prepared filing in which he joins the legion of convicted federal felons who seek to obtain relief, years after their convictions and sentencings, based on the Supreme Court's decision in Blakely v. Washington as applied in United States v. Booker, 375 F.3d 508 (7th Cir. 2004). In this instance Montana attempts to call 18 U.S.C. § 3582(c)(2) into play, although the terms of that statute obviously do not apply to his situation. But this Court will ignore that mistaken effort, focusing instead on Montana's motion as such.

Everyone involved in the criminal justice system is awaiting the decision of the United States Supreme Court in its pending review of Booker and the related decision in United States v. Fanfan (both cases were argued before the Court on October 4, 2004). But nothing suggests any likelihood that the Supreme Court's ruling in those cases will include a retroactive application and extension of the Blakely principles that would

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open up for potential revision the many thousands of long-ago-imposed sentences such as Montana's. Certainly no holding of such retroactivity is implied either by Blakely itself or by Booker or Fanfan. That being so, this Court views itself as being without jurisdiction to grant the relief sought by Montana, and his motion is denied summarily.



Milton I. Shadur
Senior United States District Judge

Date: December 22, 2004